

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GARY HAWORTH,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

Case No. DISM-00-0088

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 Hearing. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held on March 26 and 27, 2002, in Room A-121 of the Administration Building at Columbia Basin College in Pasco, Washington.

1.2 Appearances. Appellant Gary Haworth was present and was represented by Edward E. Younglove III, Attorney at Law, of Parr and Younglove, P.L.L.C. Patricia A. Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 Nature of Appeal. This is an appeal from the disciplinary sanction of dismissal for neglect of duty, malfeasance, gross misconduct and willful violation of published employing agency rules or policies. Respondent alleged that Appellant conspired with a vendor to defraud the agency.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Parramore v. Dep't of Social & Health Services, PAB No. D94-135 (1995), aff'd, Thurston Co. Super. Ct. No.

1 95-2-03516-4; Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of
2 Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB
3 No. D91-084 (1992) .

4 **II. FINDINGS OF FACT**

5 2.1 Appellant Gary Haworth was a Vocational Rehabilitation Counselor (VRC) 1 and
6 permanent employee of Respondent Department of Social and Health Services (DSHS) in the
7 Region 2 Division of Vocational Rehabilitation (DVR). Appellant and Respondent are subject to
8 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
9 Appellant filed a timely appeal on December 4, 2000.
10

11 2.2 By letter dated November 21, 2000, Sadie Lee, Regional Administrator, notified Appellant
12 of his immediate suspension followed by dismissal for neglect of duty, malfeasance, gross
13 misconduct and willful violation of the published employing agency or department of personnel
14 rules or regulations. Ms. Lee alleged that Appellant conspired with Granger and Associates, a DVR
15 vendor, to defraud the agency by inappropriately referring and authorizing payment for services that
16 were either inappropriately rendered or not rendered at all for 25 clients.
17

18 2.3 Appellant began employment with the state of Washington in 1988. He began employment
19 as a VRC with DVR on March 5, 1990. Appellant had no history of formal disciplinary action.
20 However, he did have problems with case management that his supervisor addressed informally and
21 through the performance evaluation process.
22

23 2.4 Vocational Rehabilitation Counselors work with disabled clients. Their duties include
24 determining whether clients are eligible for services, doing vocational assessments, providing
25 information to clients to assist them in choosing a vocational goal and how to achieve the goal,
26

1 referring clients to the agency certified community rehabilitation provider (CRP) chosen by the
2 clients, authorizing the CRP to provide work skill building, job development and job retention
3 services for clients, verifying that services have been provided to clients, and authorizing payments
4 to the CRP.

5
6 2.5 Appellant's caseload consisted of an average of 180 clients. Appellant authorized services
7 for the clients and referred clients to agency certified CRPs. Granger and Associates was a certified
8 CRP. In addition, Columbia Industries and Goodwill were certified CRPs. Appellant admits that
9 he used Granger and Associates more often than other CRPs, but he also used Columbia Industries
10 and Goodwill.

11
12 2.6 On a monthly basis, Ms. Lee reviewed reports of DVR spending patterns and vendor use.
13 Ms. Lee was concerned about Appellant's extensive use of Granger and Associates. She discussed
14 her concerns with Appellant's supervisor, Gary Tash. Mr. Tash was aware Appellant was using
15 Granger and Associates almost exclusively. He discussed this issue with Appellant and told him
16 that his extensive use of Granger and Associates could have an appearance of favoritism when other
17 vendors could provide the same services.

18
19 2.7 David J. was one of Appellant's clients. Appellant referred David J. to Granger and
20 Associates for job placement services. David J. had one meeting with Granger and Associates in
21 October 1996. Subsequent to the meeting, David J. complained to DVR that Granger and
22 Associates had not provided him with job placement services. Rather, David J. obtained work-
23 study employment with the Benton-Franklin County Alcohol and Drug Detoxification Center
24 through the Columbia Basin College work-study program. David J. was a work-study employee
25 from November 1996 through August 1997.

1 2.8 Granger and Associates billed DVR three times for a total of \$3,050.00 for services
2 allegedly provided to David J. The first bill was for 30 hours of work skill building services at \$35
3 per hour between October 23, 1996 and November 14, 1996; the second was dated December 11,
4 1996, and was for \$1000 of placement services; and the third was dated January 13, 1997, and was
5 for \$1000 of job retention services. Appellant approved the payments but did not verify with David
6 J. that the services had been provided.

7
8 2.9 In October 1997, Ms. Lee requested that the Washington State Patrol (WSP) conduct an
9 investigation of Appellant. Ms. Lee received the completed WSP report in August 2000. After
10 reviewing the report, Ms. Lee determined that Appellant had conspired with Granger and
11 Associates to commit fraud. Ms. Lee determined that in addition to David J., Appellant had
12 referred clients and authorized payments to Granger and Associates for services either
13 inappropriately rendered or not rendered at all to 24 clients. In total, Appellant approved \$67,300
14 for services not rendered.

15
16 2.10 Appellant received training in DVR policies and procedures and was aware of agency
17 policies, including the DSHS ethics policy.

18
19 2.11 The importance of verifying services is discussed during DVR training. In addition, Chapter
20 10 of the Vocational Rehabilitation Participant Services Manual discusses the VRC's responsibility
21 and accountability to authorize purchases and payments for services rendered. The manual states,
22 in part:

23 10.01 FISCAL POLICY

24 C. DVR staff use a variety of DVR documents to establish and maintain individual
25 participant files within STARS which enables the system to:

26

5. Account for all expenditures,
6. Track the movement of participants through the rehabilitation program.
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8. Evaluate program outcomes.

10.02 DELEGATION OF PURCHASING AUTHORITY

A. VRCs have a unique authority delegated specifically to authorize and pay for individual participant services with federal, state, and local funds. This unique authority is essential to the rehabilitation model and process, and brings with it specific accountabilities and responsibilities.

10.03 AUTHORIZATION AND PAYMENT POLICY

. . . .

F. When the VRC determines goods and/or services have been satisfactorily delivered . . . the VRC approves that AFP for payment in STARS.

10.04.20 PAYMENTS

- A. The VRC shall authorize payment when:
1. Delivery of authorized goods and services is verified.
 2. An itemized bill is received and verified for accuracy. . . .

2.12 Appellant relied on Granger and Associates' reports and billings as verification of services rendered. Appellant admits that he approved payments to Granger and Associates without first verifying that the services had been rendered to the clients.

2.13 DSHS Administrative Policy 6.04 addresses ethical conduct and states, in part:

A. EMPLOYEE ETHICAL CONDUCT

The Department of Social and Health Services requires employees to perform duties and responsibilities in a manner that maintains standards of behavior that promote public trust, faith and confidence. Specifically, employees shall:

1. Be independent and impartial in the exercise of assigned duties, avoiding actions that create even the appearance of using the employees' positions for personal gain or private benefit. This includes:

- a. Not using state employment for private gain or advantage.

- b. Using department facilities, equipment, materials, and time only for official department business.
- c. Not asking for or accepting any gift or compensation from any source except the department for performing, delaying the performing, or not performing assigned duties.
- d. Not personally benefiting from any contract, sale, lease, or purchase made under the employee's supervision or control.
- e. Not engage in any employment, business, or professional activity which could represent a conflict of interest.

2. Strengthen public confidence in the integrity of state government by demonstrating the highest standards of personal integrity, fairness, honesty, and compliance with both the spirit and the letter of the law and departmental policies. .

5. Conduct the public's business openly and consistent with law. . . .

7. Promote an environment of public trust free from fraud, abuse of authority, and misuse of public property.

2.14 Through his work-related activities, Appellant became good friends with Ava Granger, the owner of Granger and Associates, and her son, Bruce Green, who worked for Granger and Associates. Appellant admits that he visited their office in Spokane, that he went out to lunch with them on a number of occasions, and that Mr. Green paid for Appellant's lunch on one occasion. Appellant also admits that he stayed at Mr. Green's house when Mr. Green was not present.

2.15 Ms. Lee reviewed the WSP report and determined that Appellant did not provide clients with a choice in terms of vocations, jobs or careers and that he misappropriated federal and state funds, set an inappropriate example for other staff, and adversely affected the public perception of state government and state employees. Ms. Lee expects DVR employees to be respectful of the people they serve, to deliver services as prescribed by the agency mandate and mission, and to get along with other staff. She determined that Appellant failed to meet those expectations because he did not do his job and did not ensure that the services had been delivered before authorizing payment.

1 2.16 Ms. Lee concluded that Appellant neglected his duty when he failed to properly authorize
2 services to be provided to clients, failed to follow policies and procedures, and failed to conduct
3 himself in a professional ethical manner. She also concluded that his behavior rose to the level of
4 gross misconduct because his actions were deliberate and contrary to the agency's mission. She
5 found that Appellant violated Chapter 10 of the Vocational Rehabilitation Participant Services
6 Manual and Policy 6.04 when he inappropriately approved payments to Granger and Associates and
7 failed to act in an ethical and lawful manner. Ms. Lee concluded that Appellant acted deliberately,
8 violated the trust placed in him by the agency, and wrongfully authorized payments of \$67,300 to
9 Granger and Associates, which constituted malfeasance.

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11 2.17 As a result, Ms. Lee determined that Appellant's conduct was egregious, that his behavior
12 demonstrated a flagrant capacity for dishonesty, and that dismissal was the appropriate disciplinary
13 sanction.

14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Respondent argues that Appellant failed to do his job when he encumbered state and federal
16 funds without first verifying that services were rendered to clients. Respondent acknowledges that
17 Appellant carried a heavy caseload but asserts that he was still responsible for fulfilling the
18 requirements of his job. Respondent argues that Appellant did not have permission to forego the
19 verification process simply because Granger and Associates were certified as a CRP vendor.
20 Respondent asserts that Appellant knew that Granger and Associates submitted bills for services not
21 rendered and that he knowingly approved payment for those fraudulent bills. Respondent contends
22 that Appellant's behavior demonstrates a misuse of authority and he can no longer perform his job.
23 Respondent further contends that the agency can no longer trust Appellant and that his immediate
24 suspension followed by dismissal was appropriate.

1 3.2 Appellant argues that he was not intentionally involved in activities to defraud the state but
2 contends that his heavy caseload contributed to his case management difficulties and inability to
3 keep up with his paper work. Appellant admits that he used Granger and Associates and that he
4 believed they were a reliable and reputable vendor. Appellant argues that he succumbed to Granger
5 and Associates' reports of success and asserts that he had no information to suggest that those
6 reports were false. Appellant contends that Granger and Associates' fraudulent cases constituted a
7 very small percentage of his overall caseload and that he was not the only VRC who referred clients
8 to Granger and Associates. Appellant asserts that he was the most productive VRC in the state, that
9 he had no motive to engage in a conspiracy to defraud the state and that he received no financial or
10 other benefit from Granger and Associates. Appellant argues that the agency failed to show a basis
11 for his immediate suspension and failed to show that dismissal was an appropriate disciplinary
12 sanction.

13 IV. CONCLUSIONS OF LAW

14 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
15 herein.

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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
18 the charges upon which the action was initiated by proving by a preponderance of the credible
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
21 Corrections, PAB No. D82-084 (1983).

22
23 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
24 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
25 of Social & Health Services, PAB No. D86-119 (1987).
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2 4.4 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
3 do, or the performance of an action that ought not to be done, that affects, interrupts or interferes
4 with the performance of an official duty. Parramore v. Dep't of Social & Health Services, PAB No.
5 94-135 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-03516-4.

6
7 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
8 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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10 4.6 Willful violation of published employing agency or institution or Personnel Resources
11 Board rules or regulations is established by facts showing the existence and publication of the rules
12 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
13 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
14 Health Services, PAB No. D93-053 (1994).

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16 4.7 Respondent failed to prove that Appellant conspired with Granger and Associates to defraud
17 the agency. Furthermore, Respondent failed to prove that Appellant's use of Granger and
18 Associates more often than other vendors violated written agency guidelines or procedures.
19 Respondent did not prove that Appellant's behavior constituted malfeasance.

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21 4.8 Respondent has met its burden of proof that Appellant failed to verify that services were
22 rendered before he approved payment to Granger and Associates. Appellant neglected his duty and
23 failed in his responsibility to appropriately encumber state and federal funds. Appellant's actions
24 were contrary to agency policies. Furthermore, based on his personal friendship with Ava Granger
25 and Bruce Green, his continued excessive use of Granger and Associates was unethical. Appellant's
26 behavior, given his personal friendship with Granger and Associates staff, rose to the level of gross

misconduct and adversely impacted the agency's ability to provide services to clients. Based on the egregious nature of Appellant's misconduct, his failure to account for and track \$67,300 in services, and his flagrant disregard of agency policies, the sanction of dismissal is not too severe.

4.9 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances including the seriousness and circumstances of the offense. The penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one charge is not sustained unless the entire action depends on the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

4.10 Under the totality of the proven facts and circumstances, and given the serious nature of Appellant's flagrant dishonesty as demonstrated by his repeated approval of payments without verification of services rendered, immediate suspension followed by dismissal is appropriate and the appeal should be denied.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gary Haworth is denied.

DATED this _____ day of _____, 2002.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair